IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY SIXTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT:

THE HON'BLE MR. JUSTICE V.ESWARAIAH

WRIT PETITION NO : 17143 of 2003

Between:

B.Shabbir Ahmed, S/o.late Vali Ahmed,
R/o. Adoni, Kurnool District.

..... Petitioner

AND

1. The Correspondent,

Masodia Arabic Aided High School,

Adoni, Kurnool District.

2. The District Educational Officer,

Kurnool, Kurnool District.

3 The Commissioner & Director of School Education,

Andhra Pradesh, Saifabad, Hyderabad.

4 The State of Andhra Pradesh, Represented by its Secretary,

Education Department, Secretariat Buildings, Hyderabad.

.....Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to pass orders, particularly one in the nature of writ of Mandamus declaring the order of the 4th respondent in Memo. No. 18144/PS-3/2002-1, dated 25.1.2003 as arbitrary, illegal, discriminatory, and violative of Articles 14, 16, and 21 of the Constitution of India, and the social security scheme, and consequently to set aside the same and to direct the respondents to appoint the petitioner against the existing vacancy of Record Assistant post in the 1st respondent school under social security scheme.

Counsel for the Petitioner: Mr. Kasa Jaganmohan Reddy

Counsel for the Respondents: GP For School Education. Mr. K. Somakonda Reddy.

The Court made the following order:

The petitioner questions the order of the 4th respondent-Government, passed in Memo No.18144/PS-3/2002-1 Education (PS) Department dated 25-01-2003 informing the 3rd respondent- Commissioner and Director of School Education, Hyderabad that the petitioner cannot be appointed as Record Assistant, as there is no provision in the Rules for direct recruitment to the post of Record Assistant on compassionate grounds. However, it is stated in the said memo that if there is any vacant post which is equivalent to the Junior Assistant or below except the Record

Assistant in the same school where his father worked, if he is qualified, he can be appointed in terms of G.O.Ms.No.568, Education Department, dated 01-07-1982.

Petitioner is the son of late Vali Ahmed who died on 27-12-1999 while he was working as Record Assistant in the 1st respondent-Aided High School. As the father of the petitioner died in harness leaving behind the petitioner and his mother, his mother made an application dated 4-1-2000 to the 1st and 2nd respondents for providing any suitable job to the petitioner on compassionate grounds. The second respondent-District Educational Officer called for the particulars of the petitioner vide Rc.No.294/B4/2000 dated 31-5-2000 and that the petitioner has submitted all the necessary particulars through the 1st respondent. The 2nd respondent again addressed the third respondent for further orders, who in turn, gave a reply vide Rc.No.1713/S3/2001 dated 1-3-2002 to send the proposals to the District Collector and that the Collector, it seems, returned the file stating that he is not concerned with the aided schools. Finally, the 3rd respondent addressed to the Government for clarification and in response to the said letter, the Government by its Memo No.18144/PS-3/2002-1 Education (PS) Department dated 25-01-2003 informed the 3rd respondent that the petitioner cannot be appointed as Record Assistant as there is no provision in the Rules for direct recruitment. But, however, it is stated in the said memo that his case can be considered either for the post of Junior Assistant or below except for the post of Record Assistant, if he is eligible, in the same school where his father worked. It is the case of the 4th respondent-Government that the post of Record Assistant is a promotion post and not direct recruitment post.

Learned counsel for the petitioner specifically stated that all posts in the aided private high schools are direct recruitment posts. As per Rule 12(1) of the A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Schools under private Management) Rules, 1993 (for short 'the Rules') issued in G.O.Ms.No.1 Education dated 1-1-1994, the Educational Agencies are entitled to appoint the staff as per the staffing pattern prescribed by the Government from time to time in private aided educational institutions. As the father of the petitioner died while he was working as record assistant and as the said post is still vacant, it is submitted that the petitioner is entitled to be considered for the said post. It is further stated by the learned counsel that as per Rule 12(2) of the Rules, all teaching staff and non-teaching staff shall be recruited through staff selection committee to be

constituted by the Educational Agency in accordance with the Rules. Therefore, it is stated that all posts whether teaching or non-teaching shall be recruited directly, and therefore, it cannot be said that the post of record assistant is a post to be filled up by way of promotion but not by way of direct recruitment. It is further stated that in fact the Government also issued clarifications vide its Memo No.3838/P3.1/99-2 dated 1-3-1999 stating that according to Rule 12(1) of the Rules, the Educational Agency shall appoint the staff in the pattern prescribed by the Government from time to time in the methods of appointment mentioned thereunder and according to Rule 12(2) of the Rules, all teaching as well as non teaching staff shall be recruited through the staff selection committee to be constituted by the Educational Agency. It is further stated that the A.P. General Subordinate Rules issued in G.O.Ms.No.965, General Administration (Ser.B) Department, dated 21-10-1991, in general are not applicable to the private Aided Institutions and autonomous body and they are applicable to Government Employees.

In view of the aforesaid Rules, I am of the opinion that the impugned memo of the Government is contrary to the Rules and accordingly the same is set aside and the official respondents are directed to permit the concerned educational agency to consider the case of the petitioner for his appointment to the post of the Record Assistant within six weeks from the date of receipt of a copy of this order.

The writ petition is accordingly allowed. No costs.

26-8-2004

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To,

1. The Correspondent,

Masodia Arabic Aided High School,

Adoni, Kurnool District.

2. The District Educational Officer,

Kurnool, Kurnool District.

3. The Commissioner & Director of School Education,

Andhra Pradesh, Saifabad, Hyderabad.

4. The State of Andhra Pradesh, Represented by its Secretary,

Education Department,
Secretariat Buildings, Hyderabad.

5. Two CCs to the Government Pleader for School Education,

High Court of A.P.,Hyderabad.(o.u.t)

6. Two CD copies.